Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ____

In The
Supreme Court of the United States

Mark Anthony Lewis

Petitioner

v.

Bell Atlantic/Verizon et al

Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI
To the UNITED STATES COURT
Of APPEALS & Rehearing Panel
For THE THIRD CURCUIT

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner
MARK ANTHONY LEWIS
8415 Lynnewood Rd,
Philadelphia, PA. 19150
215 248-9237 • (Of: uQQn.com)

I

QUESTIONS PRESENTED

I, MARK ANTHONY LEWIS, a Pro Se Petitioner, express a belief, based only on FACTS and EVIDENCE that <u>THIS WRIT REQUEST</u> involves the following two questions of exceptional importance for 'ALL' writ petitioners.

1. Are the 'Substantial Rights of a Petitioner 'ABUSED and AFFECTED' when LOWER COURTS fail to uphold RIGHTS for a Petitioner to conduct a FULL and FAIR use of the Discovery Process?

2. Are the 'Substantial Rights of Petitioners 'ABUSED and AFFECTED' when LOWER COURTS disregard 'WELL PLED' requests for an EVIDENTUARY HEARING where DISCOVERY VIOLATIONS are repeatedly violated?

COMPLETE LIST OF PARTIES TO THIS CASE:

PETITIONER: Mark Anthony Lewis

RESPONDENT: Bell Atlantic/Verizon.
Respondents not listed on the cover:
1. Bell Atlantic/Verizons' affiliate company 'CORE' (*Who has not been excused from this case*) 2. Sue Petran 3. Abby Eltz. 4. Ron Smith. 5. Chris Bergy. 6. Debbie Divantantonio. 7. Michelle Divantantonio. 8. Mark Monso (?). 9. Peter Turk. 10. Joy & Bob Groody 11. Dan Kelly. 12. Carl. 13. Linda O'Briant. 14. Dave Paskowlski. 15. Dennis Greeney 16. Joe Gimalairo. 17. John Natoli. 18. Jamie Murray. 19. George Keefe. 20. Daniel J. Whellan...
...(Collectively, "Respondent/Defendant")

And to Counsel for
Defendant/Respondent:
FOLEY HOAG attorneys at law;
Athur G. Telegen & Mrs. Matthews

TABLE OF CONTENTS

Page

OPINIONS 1

JUSRISDICTION 1

RELEVANT CONSITUTIONAL and/or STATUTORY PROVISIONS..... 11-13

STATEMENT..... 3

RULINGS AND OPINIONS BY ALL LOWER COURTS. 1.a

REASON FOR GRANTING PETITION..... 15

INDEX TO APPENDECIES..... 1a

(Other Facts/Evidence within Appendix)

1. A one day AFFIRMATION of RULING.. 5a & 6a, submission date compared to Ruling date on 3a

2. Rulings and Opinion of all Lower Court Judges.....1a

3. Petitioner Lewis Deposition Transcript of Respondent Human Resource Manager, where the

presiding Judge, Judge Surrick, makes an appearance and FAILS TO ACT when shown DISCOVERY VIOLATIONS by Respondent.41a, 15

4. **District Courts' Denial of Petitioner Lewis's 'WELL PLED' request for an EVIDENTIARY HEARING.....44a**

5. **Respondents' documents are discovery violations, discarded by Courts.45a**

6. **Abby Eltz (Habaca) Signed Confession that 'SHE' (A Supervisor) falsified Petitioners timesheet. Needed Discovery ..... 47a & 43a, 68¶2**

7. **Respondent's Supervisor, Abby Eltz signed and submitted the false Time Records Document that Counsel for Respondent repeatedly blames on Petitioner Lewis.....48a**

8. **PA BOARD OF EMPLOYMENT COMPENSATION REVIEW: First Discharge hearing favored Petitioner Lewis..... 49a-52a**

(Connected to the attachment of District Court Memorandum)

9. Types of Awards and Recognition always achieved.. ..... 53a & 54a

10. Judge Surrick fails to see written proof by Respondents' own investigator that Respondent's actions towards Petitioner Lewis could Possibility be construed as unfair labor relations 55a

11. See Judge Surrick's Memorandum, page 3, ¶1. Respondent shifts their story from a Male who intervenes, to it being Female Supervisior Abby Eltz Habca. Respondent shifted/changed their story during EEOC and UNION ARBITRACTION STAGE; regarding Petitioner Lewis' discharge. .....56a Top/Bottom

LEGAL NOTE:
Shifting excuse gives rise to pretext. " *Appelbaum v. Milwaukee Metro. Sewerage Dist.*, 340 F.3d 573, 579 (7th Cir.2003); *see also Schuster v. Lucent Techs., Inc.*, 327 F.3d 569, 577 (7th Cir.2003) Still, Judge Surrick ignores evidentiary requests

TABLE OF AUTHORITIES

Page

CASES

• ***EVIDENCE: Doe v. Gunny's Ltd. Partnership , 256 Neb. at 663, 593 N.W.2d at 291*** 10.1

• **DISCOVERY:** ***Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) also Billman v. Indiana Dep't of Corr., 56 F.3d 785, 789-90 (7th Cir. 1995) (Posner, C.J.)*** 10.2

• **RULE 59(b), (1), (2) & (3).. ..... 10.3**

• **Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938). Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA) 11.4**

• **People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980)..... 11.5**

• **The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934). Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) In re Village of Willowbrook, 37 Ill.App.2d 393 (1962). Dunham v. Dunham, 57 Ill.App. 475 (1894),**

affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935)..... 11.6

• Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990)..... 12.7

• Corneveaux v. CUNA Mut. Ins. Group, 76 F.3d 1498, 1507 (10th Cir. 1996) (quotation omitted). 12(b)(6)..... 12.8

ON PETITION FOR WRIT OF CERTIORARI

To the UNITED STATES COURT OF APPEALS & Rehearing Panel FOR THE THIRD CURCUIT

OPINIONS BELOW

(Also, listed and Attached to Appendices)

PETITION FOR REHEARING

Dated: May 22, 2009. Petitioner's request for rehearing by the panel and the Court en Banc, is denied. Opinion & Judgment issued 4/14/09.
PUBLISHED on Internet, world wide.

PETITION FOR APPEAL

Dated: April 14, 2009. ORDERED and ADJUDGED that the judgment of the District Court entered August 1, 2008, be and the same is hereby affirmed. Costs taxed against the Petitioner.
PUBLISHED on Internet, world wide.

DISTRICT COURT

Dated: July 31, 2008
Judgment in favor of Defendant against Plaintiff
PUBLISHED on Internet, world wide.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

BRIEF PREFACE:

This instant case is one of 'FIRST IMPRESSIONS' and is not a 'HIGH PROFILE CASE.' However, it is a case where Substantial Rights are at issue and require clarity by the UNITED STATES SUPREME COURT. This case has been made more difficult due to it centering around the actions of an extremely PROMINENT and ACCOMPLISHED BOSTON ATTORNEY (Counsel for Respondent) and the actions of a very charming, 'VERY' attractive 'BLONDE FEMALE' supervisor for Respondent; who have repeatedly been excused from the consequences of disregarding the 'SUBSTANTIAL RIGHTS' of the Petitioner.

STATEMENT OF PETITIONERS FACTS

The DENIAL judgment of the Court of Appeals Panel Review (Rehearing and Rehearing En Banc) was entered on MAY 22nd 2009. The DENIAL/AFFIRMATION judgment of the Court of Appeals was entered on April 14th 2009. This petition for a writ of certiorari has been filed within 90 days. This Court has jurisdiction under 28 U.S.C. § 1254(1). Question(s) of law in civil cases regarding 'SUBSTANTIAL RIGHTS' require instructions from the SUPREME COURT to settle a controversy that has broader implications. Without FULL and FAIR use of the Discovery Process a Petitioners' case will be argued only on the FACTS and EVIDENCE a Respondent decides to forward. It's fundamentally UNFAIR for a COURT NOT to show any concern over DISCOVERY VIOLATIONS, but when there's numerous FACTS and EVIDENCE presented to a COURT and the COURT ELECTS not to get informed, it gives rise to negligence from a PERSON in an EXTEMELY POWERFUL POSITION.

On MAY 22nd the rehearing panel denied Petitioner Lewis a Rehearing and Rehearing En Banc. Present on rehearing panel: ***SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN,***

HARDIMAN, and GARTH Circuit Judges.' The COURT OF APPEALS; on April 14th 2009 heard this case. On April 15th Petitioner Lewis received notice that a SAME DAY AFFIRMATION of (Judge Surricks') the lower DISTRICT COURTS' RULING was rendered. Present for COURT of APPEALS RULING: BARRY, SMITH and GARTH, Circuit Judges.
Background of Actual events:

On March 27th 2000 Respondent (Bell Atlantic/Verizon) discharged Petitioner (Lewis) from employment. Petitioner was shown a time-sheet and was told that he was being discharged in violation of the Code of Conduct, for submitting a couple of hours over the time he actually worked. Petitioner denied the charges and told HR that Abby Eltz H. left him a note and called him at his home, stating that she found some reason to adjust and resubmit his time sheet. The Discharge of Petitioner Lewis followed this incident.

On **September 1st 2000, 8:00 am;** a hearing on the Discharge of Petitioner took place that was governed by the PA Unemployment Compensation Board of Review. **SEE APPENDIX #49a.** Petitioner presented his proof, Petitioner PREVAILED. Among the documents Petitioner Lewis presented; he presented the

SIGNED CONFESSION of the Supervisor named as the actual person responsible for falsifying Petitioners Lewis's Time-Records which was directly use to bring about Petitioner Lewis's discharge. Respondent filed an appeal, attempted to lie and was exposed by the PA BOARD. Respondents' Appeal was rejected, again Petitioner Lewis Prevailed. From this hearing forward, Respondents' altered the meaning and inclusiveness of their initial letter of discharge to include issues and matter that were never at issue and are not supported by the actual letter of DISCHARGE.

Petitioner Lewis filed charges with the EEOC and the Pennsylvania Human Relations Commission ("PHRC"), against his former employer, alleging that the Employer/Respondent (Bell Atlantic/Verizon) violated Petitioners' rights under the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. 2000(e) et. seq., the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. 951 et seq., and 42 U.S.C. 1981 ("Section 1981"). The EEOC deemed Petitioner Lewis CAUSE of ACTIONS and Respondents' ARGUMENTS as a draw/tie. Petitioner received a Notification of Right to Sue letter, and filed the current CIVIL ACTION on Feb. 27, 2002. Petitioner is seeking compensatory damages on all claims, punitive damage and any additional relief the court deems appropriate.

NOTE: The only reason Respondent didn't lose at the second Hearing, at the EEOC was directly due to Respondents' 'NEWLY RECONSTRUCTED MULTIPLE CLAIMS ARGUMENT. Full use of the Discovery process would have revealed this act of FRAUD also.

A. Basic for Jurisdiction in the Lower Court.

Contrary to the LOWER COURT(S) misrepresentation of Petitioner Lewis's actual articulated argument, in Brief, Petitioner Lewis's STATED CAUSE OF ACTION were: a). Discrimination (By Contrast), b). Hostile Work Environment (Humiliation, Harassment & Impermissible Retaliation and Discharge) c). CONTINUOUS VIOLATION THEORY or CONTINUOUS VIOLATION DOCTRINE. Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. 2000(e) et. seq., the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. 951 et seq., and 42 U.S.C. 1981 ("Section 1981"), the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. 951 et seq., and 42 U.S.C. 1981 ("Section 1981").

Discovery Documents and Witnesses withheld by Respondent is they KEY to all claims and charges.

Although perfected (Under the Colors of LAW) by Counsel for Respondent, the Discharge

of Petitioners Lewis employment was Planned and Directly 'CAUSED' by the ACTIONS of Respondents' Supervisor, Abby Eltz Habbaca. (SEE: *524 U. S., at 765. Burlington Industries, Inc. v. Ellerth, 524 U. S. 742 Employers responsible for the actions of Supervisors*).

The Court of Appeals was made aware that- District Court Judge, Judge Surrick, ignored and refuses to let Petitioner Lewis Directly show him Respondents' DISCOVERY FRAUD. One from the many documents Respondent Altered was shown. **SEE APPENDIX #45a**

> NOTE: Judge Surricks' appearance was due to Respondents' request that District Court Judge Stop in during a Petitioner Lewis taking Deposition of two Employees of Respondent. **SEE APPENDIX # 41a.** District Court Judge then files a succession of ORDERS denying Petitioner Lewis SUBSTANTIAL RIGHTS regarding Respondent's obvious violations. **SEE APPENDIX #44a.** Somehow, the wrong litigant is punished.

B. Procedure Background

Shown to the Court of Appeals were-

An EVIDENTUARY HEARING was needed after the discovery process began because, only after the discovery process does Petitioner Lewis find out what the court should be made aware of as to address Respondents' numerous VIOLATIONS.

NOTE: SEE APPENDIX #47a

Regarding the action that lead to the discharge of Petitioner Lewis, Abby Eltz Habaca (Supervisor for Respondent) SIGNED, what's essentially, a CONFESSION as to who wrote, signed and falsified the timesheet of Petitioner Lewis. **FRAUDULENTLY**, Respondent forwards this LIE as a LEAD GENIUE ARGUMENT despite this evidence that Respondent FALSIFIED their own documents. 'FULL and FAIR' use of discovery was needed to gather supporting ACTIONABLE FACTS.

Documents Respondent 'ALTERED contained additional probative NAMES and EVENTS that Petitioner Lewis would have been able to cross compare. See 'ONE' example of Respondents' act of Altering Discovery document: **SEE APPENDIX #45a**

'Respondents' '**Entire Defense**' centers around their obvious withholding of [r]ELEVANT EVIDENCE and FACTS and being enable by the LOWER COURTS.

C. Factual Background

The undisputed facts are; Petitioner Lewis presented relevant clear facts that were from within Respondent Bell Atlantic/Verison's personnel file concerning Petitioner Lewis. The file reveals OVERLOOKED evidence of the Positive View held of Petitioner Lewis. Undisputed Evidence shown during the Deposition of two company HR officials (Peter Konrad and Melaine Horn Dyer) of documents left in Petitioner Lewis Personnel. That, was only turned over because, upon termination, Petitioner Lewis Demanded an immediate copy of his personnel files... This is the only reason why there is any evidence on the record at all. **SEE: APPENDIX #53a & 54a** (which was originally attached during deposition of Respondent as Lewis Exhibit #16, 1 & 2. This is evidence that was signed by TOP CEO for Respondent, Jamie Murray, executive for the 2500 Monroe Blvd Location; where Petitioner Lewis worked). Petitioner Lewis Personnel file had other awards and recognitions during 1999. Counsel for Respondent was allowed to use old resolve matters that were resolved prior to or soon after. Counsel for Respondent was allowed to use charges that don't even match the date shown on Petitioner Lewis's letter of discharge. The regular discriminatory and malicious 'ACTS' by some within management, namely; Abby Eltz Habaca,

Chris Bergy and others along with the (Company) Respondent siding with them is the central reason this instant case is before a court of law.

The LOWER COURTS used some type of Heighten Requirement that without FULL and FAIR use of the DISCOVERY PROCESS, it was a requirement that 'NO' petitioner could reach. OF ALL THE CLAIMS THIS RESPODNENT WAS ALLOWED TO THROW INTO THEIR DEFENSE; they had only one claim that's actually supported by the ACTUAL LETTER OF DISCHARGE... however. again, along with other FACTS and EVIDENCE Petitioner Lewis has filed, Respondents' own Supervisor Admits that 'SHE' falsified Petitioner LEWIS timesheet, wrote it. Respondents Supervisor should have been accused, not Petitioner Lewis **SEE: APPENDIX #48**

•1 ***Relevant Evidence was ignored ("[r]elevant evidence..." Doe v. Gunny's Ltd. Partnership , 256 Neb. at 663, 593 N.W.2d at 291)***

•2 **DISCOVERY PROCESS WAS VIOLATED:** ***Discovery is critical for a Pro Se Plaintiff. A Pro Se Plaintiff must be fully allowed every opportunity to engage in and complete this process. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) ("[T]he plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds."); see also Billman v. Indiana Dep't of Corr., 56 F.3d 785, 789-90 (7th Cir. 1995) (Posner, C.J.)***

•3 **RULES WERE IGNORED: 59(b), (1), (2) & (3). In violation of this rule, Appellee (Bell Atlantic Verizon) failed to make full disclosure.**

•4 **TECHNICALITIES should never have been used to diminish a petitioner's rights: ("...technicalities. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938). Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA)**

•5 **Claims and EVIDENCE that the RESPONDANT engaged in FRAUD was**

presented. Lower Court Judges did not protect the appearance of justice and refused to ACT ON THIS CHARGE. (*A judge is not the court)* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980)

•6 **Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or affect. FRAUD was clearly demonstrated Petitioner Lewis, evidenced by the written confession by a Company Official of Respondent. This evidence was turned over to Counsel for Respondent who decided to forwarded a FALSE DEFENSE anyway.** The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934). Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962). Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935)

•7 **Superior liability should be applies in this case.** Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990).

•8 **Facts and Evidence were presented by Petitioner Lewis however, Peitioner Lewis's rights were discarded/excluded by the Lower Court. Petitioner Lewis's claims based on the 'inference' that was also discarded/excluded.** Corneveaux v. CUNA Mut. Ins. Group, 76 F.3d 1498, 1507 (10th Cir. 1996) (quotation omitted). A plaintiff need not plead facts to withstand a 12(b)(6) motion, a plaintiff *need only make out a claim upon which relief can be granted*.

See Persinger v. Norfolk & Western Ry., 920 F.2d 1185, 1187 (4th Cir. 1990). "[T]he exclusion of probative evidence is not to be lightly disregarded," Mullen, 853 F.2d at 1135, and constitutes reversible error if it affects the substantial rights of the parties. See Fed. R. Civ. P. 61; Fed. R. Evid. 103(a).

NOTE: *Due to so many of Petitioner Lewis' pleadings never being returned to the COURTHOUSE file jacket(s), as a COURTESY to the COURT OF APPEALS and only if needed, Petitioner Lewis paid the courthouse clerk to make copies, 'Bates/Lure Stamped' the reprints, COMPLIED, BOUND and SUBMITTED them into one definitive collection of the remaining relevant FACTS and EVIDENCE.*

REASON PETITIONER LEWIS RELYS ON TO OBTAIN A WRIT OF CERTIORARI

Petitioner Lewis was not was not ***fairly nor fully*** allowed proper and complete use of the DISCOVERY process.

Petitioner Lewis humbly requests this 'WRIT' based on the SUPREME COURTS JURISDITION over the QUESTION raised regarding 'SUBSTANTIAL RIGHTS' not based on emotions but purely as a matter of law; in protection of all Petitioners faced with the task of defending their claim with RELEVANT facts & evidence while being hampered by Continuous Discovery Violations. ***See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) see also Billman v. Indiana Dep't of Corr., 56 F.3d 785, 789-90 (7th Cir. 1995) (Posner, C.J.) ("[r]elevant evidence..." Doe v. Gunny's Ltd. Partnership , 256 Neb. at 663, 593 N.W.2d at 291)***

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3601

MARK ANTHONY LEWIS,
Appellant
v.
BELL A TLANTIC/VERIZON; BELL ATLANTIC/VERIZON, Affiliate Company 'Core'; SUE PETRAN; ABBY ELTZ; RON SMITH; CHRIS BERGY; DEBBIE DIVANTANTONIO; MICHELLE DIVANTANTONIO; MARK MONSO; PETER TURK; JOY GROJODY; BOB GROJODY; DAN KELLY; CARL; LINDA O'BRIANT; DAVE PASKOWLSKI; DENNIS GREENEY; JOE GIMALAIRO; JOHN NATOLI; JAMIE MURRAY; GEORGE KEEFE; DANIEL J. WHELLAN; VERIZON DIRECTORY GRAPHICS, INC.; IDEARC MEDIA SERVICES-EAST, INC.

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, and GARTH Circuit Judges'

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en Banc, is denied.

BY THE COURT,
/s/ D. Brooks Smith Circuit Judge

Dated: May 22, 2009

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* The vote of the Honorable Leonard I. Garth, Senior Judge of the United States Third Circuit Court of Appeals, is limited to panel rehearing.

CRO/cc: Mr. Mark Lewis
Jamie L. Matthews, Esq.
Arthur G. Telegen, Esq.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-3601

MARK ANTHONY LEWIS

Appellant

v.

BELL ATLANTIC VERIZON (E.D. of P.A. Civil No. 2-02-cv-01016)

Present: SMITH, CIRCUIT JUDGE.

1. Motion by Appellant for Oral Argument for Panel Rehearing & Rehearing En Banc

Opinion & Judgment issued 4/14/09

/s/ Chanel R. Gaines
Chanel R. Gaines 267-299-4955 Case Manager

ORDER

The foregoing Motion by Appellant for Oral Argument for Panel Rehearing & Rehearing En Banc is **DENIED.**

By the Court,
/s/ D. Brooks Smith
Circuit Judge

Dated: May 22,2009
CRG/cc: Mr. Mark Lewis
Jamie L. Matthews, Esq.
Arthur G. Telegen, Esq.

(SWIFT DENIAL)

MARCIA M. WALDRON
CLERK

Telephone
215-597-2995

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA PA 19106-1790
Website: wwwxa3.llscourts.gov

March 31, 2009

Mark A. Lewis
Jamie L. Matthews,
Esq. Arthur G. Telegen, Esq.

RE: Mark Lewis v. Belt Ad Verizon, et al Case Number: 08-3601
District Case Number: 2-02-cv-0 1016

Dear Litigant and Counsel:
Please be advised that the above-entitled case(s) will be submitted on the briefs, pursuant to 3rd

Cir. LAR 34.1 (a), with NO oral argument on Tuesday, April 14,2009. This means your presence will not be required.

Very truly yours,
/s/ Marcia M. Waldron, Clerk

By: /s/ Cara Davis. Assistant Calendar Clerk 267-299-4210

MMW/CND

Pursuant to lOP Chapter 2, you are hereby advised that your appeal will be submitted before the following panel: BARRY, SMITH and GARTH, Circuit Judges.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3601

MARK ANTHONY LEWIS,
Appellant
v.
BELL A TLANTIC/VERIZON; BELL ATLANTIC/VERIZON, Affiliate Company 'Core'; SUE PETRAN; ABBY ELTZ; RON SMITH; CHRIS BERGY; DEBBIE DIVANTANTONIO; MICHELLE DIVANTANTONIO; MARK MONSO; PETER TURK; JOY GROJODY; BOB GROJODY; DAN KELLY; CARL; LINDA O'BRIANT; DAVE PASKOWLSKI; DENNIS GREENEY; JOE GIMALAIRO; JOHN NATOLI; JAMIE MURRAY; GEORGE KEEFE; DANIEL J. WHELLAN; VERIZON DIRECTORY GRAPHICS, INC.; IDEARC MEDIA SERVICES-EAST, INC.

On Appeal from the United States District Court for the Eastern District of Pennsylvania (D.C. Civil Action No. 02-CV-01016) District Judge: Honorable R. Barclay Surrick

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Submitted Pursuant to Third Circuit LAR 34.1(a)
April 14, 2009

Before: BARRY, SMITH and GARTH, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District

Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on April 14, 2009. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 1, 2008, be and the same is hereby affirmed. Costs taxed against the Petitioner. All of the above in accordance with the opinion of this Court.

ATTEST:
/s/ Marcia M. Waldron
Clerk

Dated: April 14, 2009

JUDGEMENT AND OPINION OF COURT OF APPEALS

MARCIA M. WALDRON
CLERK

Telephone
215-597-2995

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA PA 19106-1790
Website: wwwxa3.llscourts.gov

April 14, 2009

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155 Seaport Boulevard
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RE: Mark Lewis v. Bell Atlantic/Verizon, et al
Case Number: 08-3601
District Case Number: 2-02-cv-01016

ENTRY OF JUDGMENT

Today, April 14, 2009 the Court has entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment. 45 days after entry of judgment in a civil case if the United States is a party.

Page Limits: 15 pages
Attachments: a copy of the panel's opinion and judgment only. No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seek only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. If separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to a combined 15 page limit. If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for

rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed.R.App.P. 41. Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
s/ Marcia M. Waldron, Clerk
Chanel R. Gaines, Case Manager
267-299-4955

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3601

MARK ANTHONY LEWIS,
Appellant
v.
BELL A TLANTIC/VERIZON; BELL ATLANTIC/VERIZON, Affiliate Company 'Core'; SUE PETRAN; ABBY ELTZ; RON SMITH; CHRIS BERGY; DEBBIE DIVANTANTONIO; MICHELLE DIVANTANTONIO; MARK MONSO; PETER TURK; JOY GROJODY; BOB GROJODY; DAN KELLY; CARL; LINDA O'BRIANT; DAVE PASKOWLSKI; DENNIS GREENEY; JOE GIMALAIRO; JOHN NATOLI; JAMIE MURRAY; GEORGE KEEFE; DANIEL J. WHELLAN; VERIZON DIRECTORY GRAPHICS, INC.; IDEARC MEDIA SERVICES-EAST, INC.

On Appeal from the United States District Court for the Eastern District of Pennsylvania (D.C. Civil Action No. 02-CV-01016) District Judge: Honorable R. Barclay Surrick

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Submitted Pursuant to Third Circuit LAR 34.1(a)
April 14, 2009

Before: BARRY, SMITH and GARTH, Circuit Judges
(Opinion filed: April 14, 2009)

OPINION

PER CURIAM

Mark Anthony Lewis appeals from an order of the United States District Court for the Eastern District of Pennsylvania granting the defendant's motion for summary judgment in his civil action. We will affirm. Because the parties are familiar with the history and facts of the case, and because the District Court's memorandum contains a detailed account, we will recount the background in summary fashion. Lewis, an African American male, had been employed by Bell Atlantic Directory Graphics (now "Idearc Media Services," hereinafter "the Employer") as an advertisement compositor. Lewis's lawsuit alleged discrimination based essentially on three incidents. First, he noted that he was suspended in 1998 for misusing company time. However, the suspension was withdrawn, the incident was purged from his personnel file, and he was reinstated with back pay. Second, Lewis was

suspended in February 1999 for having a verbal confrontation with a coworker/ and for falsifying his employment application to indicate that he had graduated from high school when he had not.3 Although the Employer intended to terminate Lewis, his union

1 The complaint was dismissed as to the individual defendants named therein based on insufficiency of service of process. Dist. Ct. Order, entered Dec. 20, 2002, dkt. #23.

2 Both parties to the confrontation were sent home for the day, with pay, pending investigation. Witnesses to the confrontation later indicated that Lewis was the aggressor.

3 The incident with the coworker triggered an investigation into Lewis's application. In its letter offering employment, the employer informed Lewis that his employment was contingent on a successful background check, which could also take place after his employment began, and that the employer reserved the right to terminate him at any time negotiated a "last chance agreement" in lieu of termination, and Lewis returned to work in March 1999.4 The third incident Lewis's complaint relies on is his termination on March 27, 2000 for false reporting of time records and fraudulent receipt of short-term disability funds. Lewis filed a grievance with his union regarding his termination. Following proceedings, a Board of Arbitration found that the Employer had just

cause to terminate Lewis. Lewis filed a charge of discrimination against the Employer with the United States Equal Employment Opportunity Commission, and received a right to sue letter on November 30,2001. Lewis filed the complaint in February 2002. Following discovery, the District Court granted the Employer's motion for summary judgment, finding that Lewis had failed to establish a prima facie case of employment discrimination

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based on the background check.

[4] In July of 1999, Lewis filed an internal complaint stating that his 1998 and 1999 suspensions were the result of disparate treatment based on his race. The Employer hired an outside firm to investigate his claims. The firm found no evidence of racial discrimination or disparate treatment, and noted, inter alia, that between 1997 and 1998, the *Employer* had terminated four white employees for lying on their employment applications, while Lewis had been allowed to keep his job.

[5] Lewis had informed the Employer's short-term disability provider that he had been absent from work from January 24, 2000 until February 4, 2000. The disability provider paid short-term disability payments based on information provided by Lewis, even though, in actuality, he was not absent and was receiving regular pay from the Employer for that period. The Employer also found that Lewis had submitted a time sheet showing that he worked over seven hours on March 14, 2000, when he had only worked about one-half hour on that date. A manager corrected the time sheet to reflect the amount of time Lewis was actually at work before it was submitted.

based on the three incidents noted above. Lewis filed a timely notice of appeal of this decision. He

also challenges the District Court's decision not to recuse upon his motion, and the District Court's rulings on his other motions.

We have jurisdiction over the appeal under 28 U.S.C. 9 1291 and exercise plenary review over the District Court's decision to grant summary judgment. McGreevy v. Stoup, 413 FJd 359,363 (3d Cir. 2005). Summary judgment is appropriate when the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A court reviewing a summary judgment motion must evaluate the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. Brewer v. Quaker State Oil Ref. Corp., 72 FJd 326,330 (3d Cir. 1995). However, a party opposing summary judgment "must present more than just 'bare assertions, conclusory allegations or suspicions' to show the existence of a genuine issue." Podobnik v. U.S. Postal Serv., 409 F.3d 584, 594 (3d Cir. 2005) (quoting Celotex Corp. v. Catrett, 477 U.S. 317,325 (1986)). As Lewis did not submit direct evidence of discriminatory behavior, the District Court appropriately analyzed his discrimination claims under the familiar burden-shifting framework established by McDonnell Douglas v. Green, 411 U.S. 792 (1973). Under that framework, a plaintiff challenging an adverse employment decision has the initial burden 4 of establishing a prima facie case of discrimination.

See McDonnell Douglas, 411 U.S. at 802. To set forth a prima facie case of disparate treatment a plaintiff must show that: "(I) s/he is a member of a protected class; (2) s/he was qualified for the position s/he sought to attain or retain; (3) s/he suffered an adverse employment action; and (4) the action occurred under circumstances that could give rise to an inference of intentional discrimination." Makky v. Chertoff, 541 F .3d 205, 214 (3d Cir. 2008). The burden then shifts to the employer to proffer a legitimate, nondiscriminatory reason for the adverse action. McDonnell Douglas, 411 U.S. at 802. Once that burden is met, the plaintiff must establish by a preponderance of the evidence that the nondiscriminatory reasons articulated by the employer are pretext. See Jones v. School Dist. of Philadelphia, 198 F 3d 403,410 (3d Cir. 1999). To defeat summary judgment, "the plaintiff must point to some evidence, direct or circumstantial, from which a fact finder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F .3d 759, 764 (3d Cir. 1994). We conclude that the District Court's analysis and entry of summary judgment on Lewis's discrimination claim is fully supported by the record. We agree with the District Court that Lewis did not meet his prima facie case of showing discrimination against him on account of his race, and, even assuming he did

meet that burden, the Employer terminated him for legitimate, non-discriminatory reasons. See Fuentes, 32 F 3d at 763 5 (noting that the employer's burden to articulate a legitimate, nondiscriminatory reason is "relatively light").

We agree with the District Court that Lewis's suspension in 1998 was not an adverse employment action, as he was reinstated with back pay and the incident was expunged from his record. We further agree that Lewis has not pointed to any evidence in the record that would allow a fact finder to infer that his 1999 suspension had anything to do with his race. To the contrary, the record shows that several white employees were fired for lying on their employment applications, while Lewis was given another chance on the job. Finally, we agree that Lewis presented no evidence to show that his termination was racially motivated. The District Court also properly found that even if Lewis had established a prima facie case, the Employer presented legitimate, non-discriminatory reasons for terminating him; i.e., attempting to submit a false time sheet, and collecting short-term disability benefits and wages at the same time. After thoroughly reviewing the record, we conclude that the District Court properly determined that Lewis did not demonstrate the existence of a genuine issue of material fact with regard to his discrimination claim. Lewis contends that the District Court erred in failing to recuse upon his motion. We review a judge's decision not to recuse, under either 28 U.S.C. ~

144 or ~ 455, for an abuse of discretion. See Jones v. Pittsburgh Nat'l Corp., 899 F.2d 1350, 1356 (3d Cir. 1990). Under section 144, a judge must recuse if a party files a "sufficient affidavit" establishing that the judge has a personal bias or prejudice against the party seeking recusal, or in favor of the adverse party. 28 U.S.C. 9 144. Under section 455, a judge must recuse where the judge's impartiality "might reasonably be questioned." 28 U.S.C. 9455(a). Lewis cites various rulings of the District Court that were unfavorable to him as evidence that the District Court harbored a preconceived unfavorable judgment about him. Unfavorable rulings do not find an adequate basis for recusal. See Secura Comm Consulting, Inc. v. Securacom Inc., 224 F.3d 273,278 (3d Cir. 2000). Moreover, we find nothing in the record that suggests "a deep-seated favoritism or antagonism" by the District Court that would preclude fair judgment. Liteky v. United States, 510 U.S. 540, 555 (1994). Nor do we perceive any facts from which a reasonable person would conclude that the impartiality of the District Court might reasonably be questioned. See 28 U.S.C. 9 455(a); Edelstein v. Wilentz, 812 F.2d 128,131 (3d Cir. 1987). We discern no abuse of the District Court's discretion in the denial of Lewis's recusal motion. We further find no evidence of bias and no abuse of discretion in the District Court's rulings on Lewis's other motions, including his discovery motions. See Lloyd v. Hovensa, LLC, 369 F.3d 263, 274-75 (3d Cir. 2004) (scope and conduct of discovery within

sound discretion of trial court; appeals court reviews only for abuse of discretion). We find no record support for Lewis's claim that the Employer perpetrated a fraud on the Court.

For the foregoing reasons, we will affirm the judgment of the District Court.

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[6] Lewis's motion to file attachments as evidence and disk containing attachments is granted to the extent the documents were a part of the District Court record. This Court "cannot consider material on appeal that is outside of the district court record."
In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts, 913 F.2d 89, 96 (3d Cir. 1990).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

MARK ANTHONY LEWIS
v.
BELL ATLANTICNERIZON;
IDEARC MEDIA SERVICES-EAST, INC., ct al

CIVIL ACTION
NO.02-CV-1016

ORDER
AND NOW, this 31 day of July, 2008, upon consideration of Defendant Ideare's Motion For Summary Judgment, (Doc. No. 82), and all papers submitted in support thereof and in opposition thereto, it is ORDERED that the Motion is GRANTED. Judgment is entered in favor of Defendants and against Plaintiff Mark Anthony Lewis.

IT IS SO ORDERED.

BY THE COURT:
/s/R. Barclay Surrick, Judge

IMPORTANT NOTE:

Based on the RECORD, Judge Surrick did not submit any other documents, by way of an **MEMORANDUM, OPINION or SUMMARY** in support of his RULING while this case was in District Court Stage.

Almost a month into the Petitioner Lewis entering this instant case for review by the PENNSLYVANIA COURT OF APPEALS, only then does Judge Surrick Submit a supplementary MEMORANDUM.

By rule, Petitioner Lewis believes that such untimely submission by Judge Surrick would be time barred, it's here attached with a request that it be viewed as a Readily Curable defeat if it should not be included. However, Petitioner Lewis is torn or uncertain as to how that rule applies to the actions of LOWER COURTS.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK ANTHONY LEWIS,
Plaintiff.
v.

BELL ATLANTIC/VERIZON, et al.,
Defendants.

CIVIL ACTION
NO. 02-1016

MEMORANDUM

Presently before the Court is Defendant's Motion For Summary Judgment, (Doc. No. 82). For the following reasons, we entered the Order dated July 31, 2008, granting Defendant's Motion. [1]

I. BACKGROUND[2]

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[1] Plaintiff also filed a Request for Summary Judgment, (Doc. No. 91), as well as an Addendum to Plaintiffs' Request for Summary Judgment, (Doc. No. 90), and an Opposition to Defendants' Request for Summary Judgment, (Doc. No. 98). Defendants are correct that these filings were not timely under the scheduling order entered on February 23, 2007. (Doc. No. 92 at 2.) We also note that these filings appear to simply respond to answering Defendant's Motion for Summary Judgment. In the interest of fairness, given Plaintiffs pro se status, we will treat Plaintiffs filings as timely responses to Defendant's motion for summary judgment.

[2] Plaintiff has been prolific in his filings. There are many, they are rambling, and they are difficult to comprehend. They contain numerous allegations and accusations that are not supported in the evidentiary record. Under Rule 56 of the Federal Rules of Civil Procedure, we are required to consider "such facts as would be admissible in evidence" at trial. "Rule 56(e) does not allow a party resisting the motion to rely merely on bare assertions, conclusory allegations or suspicions." Fireman's Ins. Co. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982). We have not included the unsupported allegations in the statement of facts.

Defendant Idearc Media Services ("Idearc"), formerly known as Bell Atlantic Directory Graphics, Inc., ("Bell Atlantic" or "the Company"), is a communication and information services company.3 (Doc. No. 84 ~ 1.) On September 3, 1997, Plaintiff Mark Anthony Lewis, an African-American male, applied for employment with Defendant, then doing business as Bell Atlantic Directory Graphics. (Doc. No. 85, Ex. B, Ex. 9, Ex. 6 ("Application for Employment").) On September 17, 1997, Bell Atlantic hired Plaintiff to work as an advertisement compositor in the production department of its Valley Forge, Pennsylvania office. (Id. ~~ 3-4.) In its offer letter to Plaintiff, Defendant informed Plaintiff that his continued employment with the Company was contingent on a successful background check that could include education verification, prior employment verification, motor vehicle record checks, and substance screening. (Doc. No. 85 Ex. 7.) Defendant went on to state that its verification

process was ongoing and might take place after his employment began. (Id.) Defendant reserved the right to terminate Plaintiff s employment at any time based on the results of their background check. (Id.)

Prior to joining Bell Atlantic, Plaintiff worked as a copy consultant and then as a desktop publishing consultant at Kinko's from 1994 to 1996. (Id.' 14.) Plaintiff failed to list his employment with Kinko's on his application with Bell Atlantic. Plaintiff was terminated by Kinko's in February of 1996 after he was involved in a physical confrontation with a customer.

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[3] Initially there were numerous Defendants in this action. The only remaining Defendants are Idearc and CORE. Defendant CORE has not been actively involved in this litigation. For purposes of this opinion, "Defendant" refers to Idearc, unless otherwise specified.

where they continued their argument. (Id.) Karl Papousek, a fellow employee, finally intervened and later notified David Paczkowski, the department supervisor, of the incident. (Id.) Both men were sent home for the day pending an investigation. (Doc. No. 84' 6.)

The follow-up investigation by Defendant revealed that Plaintiff was the aggressor in the incident, and that his altercation with Rice was not his first violent outburst in front of his colleagues. (Id.) Several of Plaintiffs co-workers

expressed concern to their supervisor advising that they felt unsafe around Plaintiff. (Doc. No. 85, Ex. B, Ex. 9, Ex. 4.) The investigation further revealed that Plaintiff had provided false information on his employment application. On the employment application, Plaintiff indicated that he had graduated from high school. In fact,

Plaintiff had not graduated from high school. Plaintiff was expelled in his senior year of high school for hacking into the school computer system and changing information. (Doc. No. 85 ~ 6; Doc. No. 85, Ex. B, Ex. 9 at 3.)

On February 12, 1999, based upon these findings, Defendant suspended Plaintiff indefinitely with intent to terminate. (Doc. No. 84 ,~ 6-7.) However, Plaintiff s Union intervened on his behalf and negotiated a "last chance agreement" that allowed Plaintiff to return to work. (Doc. No. 84 ~ 7.) This agreement required Plaintiff to undergo a psychological evaluation as a precondition of his returning to work. (Doc. No. 85, Ex. B, Ex. 9, Ex. 2.) The Agreement also placed Plaintiff on a performance improvement plan that required him to attain acceptable performance levels within 90 days of his return to work and required him to conduct himself in accordance with the Bell Atlantic Code of Business Conduct. (Id.)

When Plaintiff returned to work in March, 1999, he filed a written complaint with

Defendant, alleging that his suspensions in 1998 and 1999 were the result of disparate treatment based on his race. (Doc. No. 85, Ex. B, Ex. 9, Ex. 1.) Defendant responded by hiring SJ. Bashen Corporation ("Bashen"), a human resources consulting firm, to investigate Plaintiffs claim. (Doc. No. 85, Ex. B, Ex. 9.) On July 7, 1999, after conducting interviews with both Plaintiff and other company employees and performing a comparative analysis of past disciplinary cases, Bashen issued a written summary of its findings. (Id.) Bashen found that there was no evidence that Plaintiffs suspensions resulted from any form of racial discrimination or disparate treatment and that Plaintiffs claims were "unsubstantiated." (Id.) Specifically, Basben's comparative analysis indicated that between 1997 and 1998, Defendant terminated four white employees for lying on their employment applications, while Plaintiff was actually permitted to keep his job. (Id.) Moreover, Bashen found that of the department's thirty-one compositors, approximately thirty-percent were African-American, while roughly sixty-percent were white. (Id.) In 1999, African-American compositors received 33% of all disciplinary actions, while white compositors received 66% of the department's disciplinary actions. (Id.) Of the three employees disciplined in Mark Monzo's group, two were white. (Id.) On July 19, 1999, Defendant informed Plaintiff of Bash en's findings. (Doc. No. 84 ~ 9.)

On February 22,2000 Plaintiff contacted CORE, Defendant Idearc's short-term disability provider, and informed them that he had been unable to work from January 24,2000 to February 4,2000. (Doc. No. 84' 10.) Several days later, Plaintiff sent forms to CORE purporting to verify his disability during that period of time. (Id.) On March 2,2000, CORE approved Plaintiffs request for short-term disability benefits for the time period between January 24,2000 and February 4, 2000. (Id.) Plaintiff received short-term disability benefits for this time period. Plaintiff was also being paid by his employer for working during that time period. (Id.; Doc. No. 585, Ex. A at 126-127.)

On March 14, 2000, Plaintiff reported to work and requested immediate leave under the Family Medical Leave Act. (Doc. No. 84' 11; Doc. No. 91, Ex. 3.) Plaintiff then left work after only half an hour of his scheduled work shift. (Id.; Doc. No. 85, Ex. C.) Plaintiff subsequently submitted a time sheet indicating that he had worked for 7.5 hours on that day. (Id.) Plaintiffs Manager, Abby Eltz, reviewed Plaintiffs time sheet and corrected it to reflect the time he actually worked. (Doc. No. 85, Ex. C.) On March 23, 2000, Plaintiff was suspended pending an investigation of his time sheets. (Doc. No. 85, Ex. E.) On March 27,2000, at the conclusion of this investigation, Defendant terminated Plaintiff, citing his violation of the Code of Business Conduct. (Id.; Doc. No, 84 ~ 12.)

Following his termination, Plaintiff filed a grievance with his Union, the Communications Workers of America, arguing that his termination was not for just cause. (Doc. No. 85 ~ 13; Doc. No. 91, Ex. 13.) The grievance was arbitrated by a three-person Board of Arbitration between July 31,2001 and December 7,2001. (Doc. No. 85, Ex. B, Ex 10.) After taking testimony from Plaintiff and others, the Board of Arbitration entered an award in favor of Defendant. The Board denied Plaintiff s grievance and found that Defendant had just cause to terminate Plaintiff's (Id.)

On February 27,2002, Plaintiff filed the instant lawsuit against Defendant, now doing business as Idearc Media Services-East, Inc ("Idearc"), CORE, and various Bell Verizon

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[5]At his deposition, Plaintiff admitted that after the Arbitration he attempted to have the union attorney who represented him at the arbitration and the Chairman of the Board of Arbitration arrested. (Doc. No. 85, Ex. A at 102-108.) In July of2007, Plaintiff also filed a document entitled Complaint and Affidavit for the Arrest of Arthur Telegan, (Doc. No. 94). Arthur Telegan is counsel for Defendants in this case.

employees claiming race discrimination in violation Title VII of the Civil Rights Act, and the Pennsylvania Human Relations Act.6 (Doc. No.1.) On December 20,2002, we granted the individual Defendants' Motion to Dismiss for Insufficiency of Process under Federal Rule of Civil Procedure 4(m). (Doc. No. 23.)7

II

LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Fed. Home Loan Mortgage Corp. v, Scottsdale Ins. Comp., 316 F .3d 431, 443 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material." Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, 477 U.S. at 255. Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. *See Watson* v.

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[6] There is no statement in Plaintiffs Complaint or Amendment to Original Complaint indicating that this action is brought pursuant to 42 U. S.§ 1981. In subsequent filings, Plaintiff has suggested that he is pursuing claims under Section 1981. (See Doc. No. 99 at 5.) Moreover, Defendant has framed its Motion for Summary Judgment on the assumption that Plaintiff is proceeding, *inter alia*, under Section 1981. In the interest of thoroughness, and in consideration of Plaintiff s pro se status, we will proceed

under the same assumption.

[7] In the caption of his Complaint Plaintiff named nineteen individuals as Defendants in addition to Bell Atlantic/Verizon and CORE. Plaintiff never properly served the individual Defendants.

Eastman *Kodak Company,* 235 F.3d 851, 857-58 (3d Cir. 2000). Plaintiffs cannot avert summary judgment with speculation or by resting on the allegations in their pleadings, but rather must present competent evidence from which a jury could reasonably find in their favor. *Ridgewood B. ofEduc. v. NE. for* ME., 172 F.3d 238, 252 (3d Cir. 1999); *Woods* v. *Bentsen,* 889 F. Supp. 179, 184 (E.D. Pa. 1995). When the outcome of a case will depend upon credibility determinations or state of mind, summary judgment is inappropriate. *Coolspring Stone Supply, Inc.* v. *Am. States* Life *Ins. Co.,* 10 F .3d 144, 148 (3d Cir. 1993).

III

LEGAL ANALYSIS

Plaintiff s claims in this matter appear to consist of three discrete allegations of racially motivated employment discrimination in violation of the PHRA, Title VII of the Civil Rights Act of 1964, and 42 D.S.C. ~ 1981. Employment discrimination claims are analyzed under a burden shifting framework applicable to all three statutes. *See McDonnell Douglas Corp.* v. *Green, 411* u.s. 792, 803 (1973); *Jones* v. *School Dist. of Philadelphia,*

198 F.3d 403, 410-15 (3d Cir. *1999); Fekade v. Lincoln Univ.*. 167 F. Supp. 2d 731, 740 (E.D. Pa. 2001) (applying McDonnell Douglas burden-shifting framework to discrimination claim under the PHRA). Under the McDonnell Douglas test, the plaintiff bears the initial burden of establishing a prima facie case of discrimination or unlawful retaliation. *JvlcDonnell Douglas,* 411 U.S. at 802. Once a *prima facie* case is established, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse employment action. *Krouse v. Am. Sterilizer Co., 126* F.3d 494,500 (3d Cir. 1997). If the employer articulates a non-discriminatory reason for the action, the plaintiff must then establish by a preponderance of the evidence that the defendant's

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articulated reason is merely a pretext for discrimination. Id. at 501. As the Third Circuit has explained:

the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the plaintiff must demonstrate such weakness, implausibility's, inconsistencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could

rationally find them "unworthy of credence," and hence infer "that the employer did not act for [the asserted] nondiscriminatory reasons."

Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994). In the absence of direct evidence of discrimination, a plaintiff may rely on circumstantial evidence to demonstrate weaknesses, inconsistencies, implausibility's, or contradictions in the employer's explanation for its action "so as to permit a reasonable fact finder to infer that the employer did not act for the proffered reasons." *Shaner v. Synthes,* 204 F.3d 494, 503 (3d Cir. 2000) (citing *Fuentes,* 32 FJd at 764-65). To survive summary judgment, a plaintiff "must present sufficient evidence to raise a genuine issue of fact as to whether the defendant's proffered reasons were not its true reasons for the challenged employment action." Stewart v. Rutgers, 120 F.3d 426,433 (3d Cir. 1997).

To establish a *prima* facie case, a plaintiff must show that (1) he is in a protected class, (2) is qualified for the position, (3) suffered an adverse employment action, (4) under circumstances that give rise to an inference of unlawful discrimination. *See Jones,* 198 FJd at 410-12. There is no prescribed formula necessary to demonstrate a prima facie case, and the specific manner of doing so will vary from one case to another. *See Matczak* v. *Frankford Candy & Chocolate Co.,* 136 F .3d 933, 938 (3d Cir. 1997).

The *prima facie* case requires "only
9

'evidence adequate to create an inference that an employment decision was based on an illegal discriminatory criterion.'" See Pivirotto v. Innovative Sys., 191 F .3d 344, 356 (3d Cir. 1999) (quoting O'Connor v. Canso!. Coin Caterers Corp., 517 U.S. 308, 312 (1996». A prima facie case must be established by a preponderance of the evidence. See Bullock v. Children's Hasp., 71 F. Supp. 2d 482, 490 (E.D. Pa. 1999). Demonstrating only a mere possibility of discrimination will not suffice. See id.

A review of the record in this case reveals that Plaintiff has failed to establish a prima facie case that any of the three incidents alleged in his complaint were racially motivated employment discrimination.

Initially we note that Plaintiffs 1998 suspension for misuse of company time was not an adverse employment action. Defendant has produced undisputed evidence that this suspension was later withdrawn. Plaintiff was reinstated with full pay. The Supreme Court has held that "[a] tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, a decision causing significant change in benefits." Burlington Indus. v. Ellerth, 524 U.S. 742, 761

(1998). It is possible for a suspension that is later followed by reinstatement with pay to nonetheless amount to an adverse employment decision under Title VII, the PHRA and Section 1981. For this to occur, however, the suspension must result in the loss of some sort of tangible benefits. See Wright v. Pepsi Cola Co., 243 F. Supp. 2d 117, 121-22 (D. Del. 2003). See a/so, Sarka v. Henderson, Civ. A. No. 03-3473,2004 U.S. Dist. Lexis 22194, at * 7-8 (E.D. Pa. 2004) Plaintiff has offered no evidence to suggest that he was denied any tangible benefits or employment opportunities as a result of his 1998 suspension. There was no adverse employment

action. Therefore, Plaintiff cannot establish a prima facie case of employment discrimination based upon that suspension.

Similarly, Plaintiff has not made out a prima facie case that his 1999 suspension occurred under circumstances that would give rise to an inference of unlawful racial discrimination. Plaintiff admits that his suspension was instituted following his involvement in an altercation with a co-worker. (Doc. No. 85, Ex. A at 36, 57-58.) However, again, Plaintiff has offered no evidence suggesting that he was terminated based on unlawful racial motivations. On the contrary, Plaintiff admits that Defendant disciplined the co-worker with whom he had the altercation, and treated both Plaintiff and the co-

worker identically until its investigation was completed, whereupon Plaintiff was determined to have been the instigator of the incident. (Id. at 166.) Moreover, Plaintiff has failed to produce any evidence suggesting that his suspension for supplying false information on his employment application was racially motivated. Rather, Defendant has submitted evidence indicating that in the two years preceding Plaintiff s 1999 suspension, four Caucasian employees were terminated for providing false pre-employment information. (Doc. No. 85, Ex. B, Ex. 9 at 5.) It seems clear that Defendant would have been perfectly justified in terminating Plaintiff for lying on his employment application and for fighting with a co-worker. However, Plaintiffs union intervened and negotiated an agreement with Defendant that permitted Plaintiff to continue his employment. Based upon the evidence before us, there is no genuine issue of material fact regarding Defendant's motive in suspending Plaintiff in 1999. That suspension was clearly based upon legitimate, non-discriminatory reasons. There is no evidence to suggest that it was based upon race.

Finally, Plaintiff has failed to establish a *prima facie* case that his termination in 2000

was racially motivated. In the context of discriminatory termination claims, the Third Circuit has restated the McDonell-Douglas test as

requiring a plaintiff to establish that "(1) he belongs to a racial minority; (2) he was qualified for the position; (3) he was discharged; and (4) other employees not in a protected class were treated more favorably." Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir. 1993); Jackson v. Univ. of Pittsburgh, 826 F.2d 230,233 (3d Cir. 1987), cert. denied, 484 U.S. 1020 (1988). Plaintiff has offered no evidence suggesting that Defendant failed to terminate other employees not in a protected class based upon time sheet violations and improper receipt of disability benefits. Rather, at his deposition Plaintiff testified that whether or not someone was given favored treatment with regard to time sheet violations was not based upon race, but rather upon an individual employee's relationship with management. (Doc. No. 85, Ex. A at 173-74.) Moreover, Plaintiff has failed to offer any evidence suggesting that Defendant's treatment of time sheet violators was disparate between members of different racial groups.

Even if Plaintiff were able to establish a prima facie case, Defendant presents overwhelming evidence that Plaintiff was terminated for legitimate, non-discriminatory reasons. Specifically, Defendant has submitted evidence demonstrating that Plaintiff was terminated in February, 2000 for submitting time sheets claiming to have worked hours that he demonstrably did not work and for fraudulently receiving disability benefits and wages at the

same time. (Doc. No. 85, Ex. G.) Plaintiffs conduct violated Defendant's Code of Business Conduct. The violations constituted legitimate, non-discriminatory reasons for Plaintiffs termination. The Board of Arbitrators reached this same conclusion.

Finally, Plaintiff has failed to demonstrate inconsistencies, contradictions or

implausibility's in Defendant's reasons for termination from which a fact finder could infer that they were pretextual.

For these reasons, Defendant's Motion For Summary Judgment was granted.

BY THE COURT:
/s/ R. Barclay Surrick

ENTERED AUG 29 2008
CLERK OF COURT

2:02-cv-0 1 016-RBS

MARK ANTHONY LEWIS
8415 LYNNEWOOD ROAD
PHILADELPHIA P A 19150

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK ANTHONY LEWIS
v
BELL A TLANTICNERIZON, et al.

CIVIL ACTION NO. 02-CV-1016

ORDER
AND NOW, this 28th day of 2008, upon consideration of pro se Plaintiffs Motion For Rccusal (Doc. No. 99), it is ORDERED that the Motion is DENIED.!

IT IS SO ORDERED.
BY THE COURT:
/s/ R. Barclay Surrick

I Plaintiffs Motion appears to allege that the COUl1 is bias because it fai1ed to *act* on his "Assertions that Defendant has engaged in FRAUD UPON THE COURT" (Doc. No. 66) Plaintiffs "Fraud Upon The Court" tiling contains many accusations of wrongdoing by Defendants and their Counsel. Plaintiff also filed a "Criminal

Complaint and Affidavit For The Arrest Of Arthur Telegen" (Doc.No. 94) Defendants' Counsel, and an "Affidavit For The Arrest Of Abby Eltz Habacus" (Doc. No. 95) one of the Defendants originally named. These filings are all frivolous. Plaintiffs assertion that this Court is bias because it failed to address the "Fraud Upon The Court" filing is also frivolous.

DEPOSITION TRANSCRIPTS

Mark Anthony Lewis v. Bell Atlantic/Verizon

PETER CONRAD

Page 79

1 MR. TELEGEN:
Don't answer the
2 question.
3 BY MR. LEWIS:
4 Mr. Konrad, does that appear to be -
5 MR. TELEGEN:
Don't answer the
6 question.
7 BY MR. LEWIS:
8 Q.
Mr. Konrad, you're supposed to answer the
9 question.
10 MR. TELEGEN:
Can we go off the
11 record. We'll get the Judge. I had it.
12 _ _ _
13 (Whereupon, a short recess was taken.)
14 _ _ _
15 THE COURT: Mr. Lewis, I understand
16 there's some sort of an impasse.
17 MR. LEWIS:
May I see these here
18 Mr. Konrad? When we spoke on the phone
19 about addresses that Mr. Telegen was to
20 send to me and he gave me a bogus address
21 you said do you have evidence of that.

22 This is a view from google. But when you
23 go to satellite view what they gave me was
24 an empty parking lot.
25 THE COURT: Well, I thought there

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Mark Anthony Lewis v. Bell Atlantic / Verizon
Page 85
PETER CONRAD
THE WITNESS:

1. I said I remember
2. being at a hearing with Mr. Lewis.
3. I don't remember much detail about it. And I don't
4. remember what documents I had with me at
5. that time.
6. THE COURT: And you were shown this
7. document?
8. THE WITNESS: Yes.
9. THE COURT: Do you remember whether
10. that was one of the documents?
11. THE WITNESS: I don't remember.
12. THE COURT: Mr. Lewis, that's all
13. you can get.
14. MR. LEWIS: Understood. That's all
15. I tried to do. And there's one last thing.

16. This is Exhibit 11. As with the wrongful
17. address, every time they send information
18. names are erased, information that I would
19. need to try to locate people. I always get
20. incomplete information. Like it's been
21. said that Abby Eltz was present when a
22. confrontation took place. Well, the
23. information they sent to tell me that that
24. didn't happen, they've erased all the
25. pertinent, probative information. It's

Page 68

1. A.
Would you be more specific.
2. Q.
Do you ever remember Mr. Lewis claiming that
3. Abby Eltz, who is know Abby Eltz Habbeca, was the
4. individual that falsified Mr. Lewis' time sheets?
5. IMR. TELEGEN:
Objection.
6. THE WITNESS:
I recall something
7. about that.

DISTRICT COURT DENIES PETITIONER LEWIS AN EVIDENTIARY HEARING

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK A)JTHONY LEWIS

v.

BELL ATLANTIC/VERIZON, ct, al.

CIVIL ACTION

NO. 02-cv-1016 Filed FEB 23 2007

AND NOW, the 23 day of February, 2007, upon consideration of

Plaintiff's Motion for Evidentiary Hearing (Doc. No. 46), it is ORDERED that the Motion is DISMISSED.

IT IS SO ORDERED.

/s/ R. Barclay Surrick, Judge. BY THE COURT

ONE MAJOR DISCOVERY VIOLATIONS BY RESPONDENT. Altered Files.

NOTE FROM PETITIONER: The blank lines represent areas that were erased/alter by Respondent:

02/10/99 05:10PM

To: cc: Subject: discussion with employee

_____ approached me at about 4pm on Wednesday 2/10. She told me 2 employees had a loud vocal confrontation. I asked who was involved and she said Chancz (Lewis) and someone else, I am not sure if she knew who the loud talk was directed toward.

I immediately approached Chancz and asked what had happened. (My intention was, after talking to Chancz, to find the other person and find out that person's perception of the incident.)

When Chancz started talking, he was, in my opinion, extremely stressed and upset (quiver in the voice, hands nervously shaking). As I recall the conversation, he "rambled" a bit at first about "its over. it won't happen again". "I am ending this with the head of HR later this week". He alluded to someone spreading a rumor of some sort and he said that person had come to him first and was threatening to him. He felt it was necessary to react to put an end to the issue.

I tried to calm him and I believe I somewhat succeeded. When he brought up concerns and I tried to relate to the issues, he simply explained the differences by pointing out variances in the conditions. Chancz took the opportunity to try

and explain the background surrounding his feelings. He discussed being treated strangely b~ . _____ '" ;ng his review (a shredding incident). He discussed a rumor concerning _____ at he believes led to some unique treatment. He believes he was simply trying to squelch a rumor. _____ discussed his family being a Bell Atlantic family. He discussed something about his family being in the union part of the business, and appeared to feel that people are treated differently in other Bell Atlantic operations. He also discussed how much the job means to his daughter and him. He said at one point "if hanging pictures of my daughter in my cube would help, I will do that". When I left him we shook hands and I believe he was calmed down.

I went to HR (I thought they would be leaving soon, so I looked for them before I sought th ther ??? person).

_____ nswered?? his door and I told him there was an outburst and Chancz was involved, _____ told me the other person was already in his office.

One additional thing, at some point in the conversation Chancz related to a 5 day suspension that was revoked and he was given additional pay. He feels very strongly that he wants a written apology attached to his work record.

Karl Papousek
VDG 394 / CORE 0109

Abby's Ignored Confession:

Abby L. Eltz
Supervisor- Product Quality Process Color
Ben Atlantic Directory Graphics, Inc.
2500 Monroe Blvd. P.O. Box 80050
Norristown. PA 19403 Valley Forge, PA 19484
610 650-3596. Fax 888364-3303

Chancz-
Please see me about your New England time recorded your timesheet per your efficiency sheet, you only worked New York ads. I signed and submitted your timesheet, but we may need to submit a corrected form.

Thanks /s/ Abby.

The LETTER OF DISCHARGE. NOTE:

Bell Atlantic Directory Graphic Inc.
P.O. Box 80050 2S00 Monroe Boulevard
Valley Forge. PA 19484-0050 Norristown, PA 19403
Phone: 610 650-5000 Fax: 61~S0-508S
March 27, 2000

Mark A. Lewis
901 Roumfort Rd. Philadelphia, PA 19150
Dear Mr. Lewis:
After careful review' of the facts related to your ,current ~on, which began on Thursday, March 23, 2000, it has been determined that you have violated the company's Code of Business Conduct.
This is to inform you that effective today, Monday, March 21, 2000, your employment with Bell Atlantic Directory Graphics, Inc. is terminated for false reporting of time records in violation of the Code.
Any compensation due will be mailed to you. If you have any personal items remaining in the, building, please contact Human Resources to arrange return.
Sincerely,
Peter T. Turck Operations Manager
cc:
J. Murray P. Konrad A. 'Eltz

THE CLAIMANT WAS LAST EMPLOYED BY BELL ATLANTIC ON 03/27/00.

THE EMPLOYER STATED THE CLAIMANT WAS DISMISSED FOR MJSCONDUCT. DETAILS WERE NOT PROVIDED.

THE CLAIMANT STATED HE WAS DISMISSED FOR ALLEGEDLY VIOLATING THE CODE OF CONDUCT. THE CLAIMANT STATED HE WAS ACCUSED OF INCORRECTLY COMPLETING HIS TIME SHEET.

THE CLAIMANT HAS DENIED ANY MISCONDUCT.

THE BURDEN OF PROOF RESTS WITH THE EMPLOYER TO SUBSTANTIATE ALLEGATIONS OF MISCONDUCT. THIS MUST COME FROM SOMEONE WITH FIRSTHAND KNOWLEDGE AND ACCOMPANIED BY COPIES OF RELEVANT DOCUMENTATION.

IN THIS CASE, THE EMPLOYER HAS NOT MET THIS BURDEN OF PROOF.

~ COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
PENNSYLVANIA JOB CENTER
The Last Day to File an Appeal from this Determination is; AUG 09, 2000

RIGHT OF APPEAL
If you disagree with this determination, you may appeal. If you want to file an appeal, you must do

so on or before the date shown above. See below for appeal instructions

MARK A. LEWIS (CLAIMANT) 901 ROUMFORT RD PHILA, PA. 19150

BELL ATLANTIC (EMPLOYER) 2
500 MONROE BLVD NORRISTOWN, PA. 19403

FINDINGS OF FACT:
THE CLAIMANT WAS LAST EMPLOYED BY BELL ATLANTIC ON 03/27/00.

THE EMPLOYER STATED THE CLAIMANT WAS DISMISSED FOR MJSCONDUCT. DETAILS WERE NOT PROVIDED.

THE CLAIMANT STATED HE WAS DISMISSED FOR ALLEGEDLY VIOLATING THE CODE OF CONDUCT. THE CLAIMANT STATED HE WAS ACCUSED OF INCORRECTLY COMPLETING HIS TIME SHEET.

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IN THIS CASE, THE EMPLOYER HAS NOT MET THIS BURDEN OF PROOF.

DETERMINATION:
The following determination was made in accordance
Pennsylvania Unemployment Compensation Law.
APPROVED 402(e)
BASED ON ALL INFORMATION RECEIVED.
BENEFITS ARE ALLOWED.
CWE 00/07/01 00/07/22 PMT AMT WWK 383 STATUS APPROVED.
CWE 00/07/08 PAY AMT 383* STATUS APPROVED
CWE 00/07/15 PAY AMT 383* STATUS APPROVED
*The above amount paid does not include dependents allowance.

EXHIBIT 11 321.07. ???
office Representative KCH
CLAIMANT/EMPLOYER APPEAL INSTRUCTIONS - Under Section 5011el of the Law, this Determination becomes final unless you file an appeal within 15 days from the date this Determination was mailed or delivered to you. If you think that this Determination is Incorrect, you have the right to file an appeal on or before the deadline, which is the last day to appeal shown above on this Determination. You may file your appeal in person at any Pennsylvania Job Center or by mail.

- If your appeal **is filed in person,** it must be hand-delivered during business hours on or before the task day to appeal shown above on this Determination.
~ ti your appeal is filed by mail. it must **include your name,** social security number, a specific statement that **you want to file** an appeal from this Determination, and the reasons for your appeal. The appeal must be addressed to your Pennsylvania Job Center and Postmarked on or before the last day to appeal shown above on this Determination.

CLAIMENTS SSN ***-**-5100 Application Date 00-06-25 Type Claim UC Dated Mailed 00-07-25 Office Number 0124

PHILA. GERMANTOWN JOB CENTER 235 WEST CHELTON AVENUE PHILADELPHIA PA 19144-3893

(POS) UC-44 (o) REV 4-98 SEE REVERSE SIDE FOR PROVISIONS OF LAW.

Citizenship Recognition Certificate
On Behalf of Bell Atlantic Directory Graphics
We are pleased to present
Mark Anthony Lewis.
with this certificate for outstanding achievements accomplished outside our organization, to improve the quality of life within your community.

12.14.1999

/s/ Jamie Murray

Card Of Recognition Achievement & Appreciation

Is Presented to
Mark "Chancz" Lewis

• For all of your dedication and hard work that feels overlooked

• For being who you are, sometimes keeping to yourself, communicating with simply "Hello."

• For all those times you were so into your headphones that you NEVER allowed yourself to become involved in office politics'

• Finally, for making doing your job your only agenda

Please continue being an example.

Consider yourself on this day November 11, 1999 Recognized, Appreciated, & Noticed.

Internal Complaint Memorandum
Mark Anthony Lewis
No Report Number
Page 12

2. Consider investigating the possibility of Mr. Lewis' suspension may be construed as an unfair labor practice.

If you have any questions, please do not hesitate to contact me.

Very truly yours
/s/ Kim Harris
Director of Operations

Attachments: Exhibits 1-6

Cc: Greg Miles.

At approximately 4:00, an outbreak on the floor occurred between Mark Lewis and Ken Rice. It was loud enough to disrupt the production floor for a minute or two. Trish Kahle, Micella Divantantonio and myself requested that they take their issue elsewhere to be discussed. The argument continued and Michella and I asked them to themselves into the foyer. We escorted them there and the argument continued. They both the reentered the production floor and are seated at their own terminals. Apparently. This is a continuance of what occurred last night. Mark requested names from Ken and wants documentation. This is in reference to the dollar amount of the closing group raise.

/s/ Abby Eltz.

CWA DISTRICT 13 & VERIZON ARB. NO 14 300 01699 00 ALVA (VOL1) 7.31.01
Page 92

(1) Q. Have you had any unusual ex.periet1ces wi1h Mr.
(2) Lewis prior to time you became his team leader?
(3) A. Yes. I did. I was involved in the
[4~ altercation that conseq uenlly led to his suspension. I
{5) was in between him and the other associate that was on

{6) the floor - In the very heated argument on the floor at
(7) the time.
(8) Q. How d td you get to be in between them?
(9) A. I was in close proximity as to what was
(10) happening and probably one of the more senior people on {11) the floor that heard what was going on and asked them
{12) that they take it outside and go to Human Resources.
{13) Q. Did that have any effect on you?
(t4) A. It was very scary. It was very heated, very
15) loud, two very large men.
(16) Q. First of all Mr. Lewis worked second shift?
(17} A. Yes.
(18) Q. What were his hours?
(19) A. 5:30 he started. p.m.
(20) Q. What shift were you working while you were
(21) the supervisor"?
(22) A. First shift.
(23) Q. So to the extent you saw Mr. Lewis Is because
(24) you worked past the end of your shift?

CERTIFICATE OF SERVICE

No._____

Mark Anthony Lewis

Petitioner

v.

Bell Atlantic/Verizon et al

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the writ of certiorari contains 2,295 words, on 15 pages, excluding what's allowed by Supreme Court Rule 33.1(d). Also, the **COVER is 65lb** and all CONTENT within is 60lbs or above.

This Petition was reconfigured to closely follow the outline as set forth by the UNITED STATES SUPREME COURT. Any changes made were those allowed by the COURT for conformity. No additional evidence or positions added.

I DECLARE under penalty that the foregoing is true and correct. Executed on or before November 14, 2009 (which fell on a Saturday) and did not exceed the time required to submit this petition or any additional time allotted to address what was deemed to be 'READILY CURABLE.'

Also, as required by RULE, I've always provided Respondent with (3 Sets each) the same documents sent to the SUPREME COURT . Full use of time to compile this petition was needed and required. Petitioner Lewis, other than google and online research, is a Pro Se Petitioner without legal assistance of any kind.



CERTIFICATE OF SERVICE

I (MARK ANTHONY LEWIS) hereby

certify that these documents were served on:

Attorneys at law, Counsel for Respondent,

Bell Atlantic/VERIZON- Defendant/Respondent

Arthur G. Telegen (a) & Mrs. Matthews (b)

FOLEY HOAG attorneys at law

Arthur G. Telegen

a. 155 Seaport Boulevard, Boston Mass. 02109-2600

Mrs. Matthews

b. 155 Seaport Boulevard, Boston Mass. 02210

The SUPREME COURT of the UNITED STATES

(Clerks Office. Washington, D.C. 20543-0001)

I DECLARE under penalty of perjury that I served this WRIT OF PETITION with no change to the QUESTION, making adjustment to fit District Courts Memorandum w/Petitioners associated appendix; served on Respondent and **the UNITED STATES SUPREME COURT**, executed on or before November 14th 2009. (which falls on a Saturday)

